

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH MUMBAI**

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON’BLE SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 6318/Mum/2024
(Assessment Year: 2015-16)**

Umang Boards (Mumbai) Pvt Ltd Umang House, 7-B, Bharat Mata Path, Jamna Lal Bajaj Marg, C-Scheme, Jaipur.	Vs.	ITO – 14(3)(1) Aayakar Bhavan, MK Road, Mumbai – 400020.
PAN/GIR No. AABCU0882C		
(Applicant)		(Respondent)

Assessee by	Shri Rohan Sogani
Revenue by	Ms. Nidhi Agarwal, Sr. DR

Date of Hearing	14.01.2025
Date of Pronouncement	25.02.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the assessee challenging the impugned order 03.10.2025 passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre (NFAC), Delhi / CIT(A) for the assessment year 2015-16.

2. On the perusal of the case file, we found that Ld. CIT(A) has dismissed the appeal of the assessee, but the merits of the case have been duly considered. Therefore, keeping in view the decision of the Ld.CIT(A) on the merits of the appeal, we have decided to adjudicate the grounds of appeal on merits as all the documents filed by the assessee before AO are already on the case file.

Ground no 1

1. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in passing the order, in the first appellate proceedings, ex-parte, without providing adequate opportunity to the assessee company, to present its case and make appropriate submissions. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may be please be granted by quashing the entire order passed by the Id. CIT(A), being passed against the principles of natural justice.

3. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in adjudicating the appeal against the principles of natural justice.

4. In this regard, Ld. AR submitted that proper and due opportunity was not granted to the assessee and Ld. CIT(A) has adjudicated the grounds raised by the assessee in violation of the principles of natural justice

5. Whereas on the contrary, Ld.DR submitted that due and proper opportunities were granted to the assessee, but even in spite of that assessee failed to appear before

Ld. CIT(A) therefore Ld. CIT(A) adjudicated the grounds raised by the assessee considering the submissions filed by the assessee and the documents placed before Ld.AO.

6. We have heard counsel for both the parties and perused the material placed on record and the orders passed by the revenue authorities. From the records we noticed that during the course of appellate proceedings several notices were sent to the assessee from 2018 to 2021, but the assessee had only filed adjournment letters . Apart the assessee also failed to place on record specific documents as directed by Ld. CIT(A). Therefore, we are of the view that proper and sufficient opportunities were granted to the assessee but the assessee failed to avail opportunities and hence Ld.CIT(A) has rightly decided the appeal *ex-parte* after considering the submissions of the assessee and taking into consideration the documents filed by the assessee, therefore we see no reasons to interfere into or to deviate from the findings so recorded by Ld. CIT(A), hence ground no.1 raised by the assessee stands dismissed.

Ground no 2.

2. In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO, in making additions of Rs. 1,63,99,200 to the income of the assessee company under Section 68. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of case. Relief may please be granted by deleting the entire such additions made by Id. AO as confirmed by the Id. CIT(A)

7 This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in upholding the additions made by AO u/s 68 of the income tax act. In this regard Ld. AR relied upon his written submissions and case laws cited in the said submissions.

2.1 During the course of assessment proceedings, assessee company submitted the following documents in relation to the amount received from SDPL:

2.1.i Copy of the bank statement of the assessee company, reflecting the receipt of the entire amount of consideration through the banking channel.

2.1.ii Audited financial statements of SDPL for the periods ending 31.03.2014 and 31.03.2015, clearly evidencing the investments made by SDPL in the assessee company.

2.1.iii Confirmation letter from SDPL, dated 27.11.2017, confirming:

The investment made in the assessee company.

Date-wise particulars of the remittances made.

** PAN details of SDPL.*

** Confirmation that the source of investment was the sale of shares of other entities.*

The aforementioned factual position is undisputed.

2.2 During the assessment proceedings, Id. AO issued notice under Section 133(6) dated 16.11.2017 to SDPL, seeking specific details. The notice was duly served on SDPL, and a reply dated 14.12.2017 was submitted by SDPL, along with certain documents.

2.3 However, the Id. AO noted that the letter received from SDPL did not mention the date of issuance and seal or logo of the SDPL. Based on these observations, Id. AO concluded that SDPL was a shell company. Consequently, additions were made to the income of the assessee company under Section 68 for the amount received from SDPL.

2.4 It is pertinent to note that the action of the Id. AO in making the addition to the income of the assessee company is not pursuant to any search conducted on a third party. It is not the case of the lower authorities that any search was conducted on a third party, which revealed that SDPL was engaged in providing bogus transactions or was a shell company.

2.5 Further, the documents submitted by the assessee company before the Id. AO did not reveal any discrepancies. Once the assessee company submitted the required documents, the onus under Section 68 was fully discharged on its part. Thereafter, the burden shifted to the Id. AO to rebut the claim of the assessee company.

2.6 However, the Id. AO arbitrarily categorized the investor company, SDPL, as a shell company merely because the reply submitted by SDPL lacked a covering letter. It is important to note that SDPL itself confirmed the source of the investment, stating that it was derived from the sale of shares of other entities. Thus, the cash flow of the investor company was fully explained and made known to the Id. AO.

2. The lower authorities have questioned the genuineness of the investment made by SDPL into the assessee company, primarily on the ground that the company was not carrying out any business at the relevant point in time. Essentially, Id. AO and Id. CIT(A) have cast doubt on the investor's acumen in making the decision to invest in the assessee company. Their contention is based on the premise that, as the company was not generating any profits, no prudent investor would choose to invest in such a company. On this basis, the genuineness of the transaction has been doubted.

2.8 It is respectfully submitted that the decision to invest in any company, as well as the valuation at which such an investment is made, is a matter of mutual understanding and meeting of minds between the investor and the investee. Such subjective considerations cannot be used as a basis to declare the investment as non-genuine.

2.9 At the time the investment was made, the assessee company had significant future prospects in the field of electrification and related production activities. Considering these prospects, the investor deemed it fit to make the investment in the assessee company. Therefore, the doubts raised regarding the genuineness of the transaction are baseless and unwarranted.

2.10 It has also been contended that no prudent person would lend such a significant amount to a company in the assessee's financial position. It is respectfully submitted that the present case involves an investment in equity shares, not a loan. When an investor decides to invest in a company, they are aware of the inherent risks associated with such an investment. The decision to invest is made after careful consideration of the risk-return analysis, which differs significantly from the principles governing the lending of money.

2.11 In the case of lending, the lender primarily assesses the financial position of the borrower to ensure repayment. In contrast, an investment decision is driven by the investor's confidence in the business strategy and future prospects of the company. The investor, in this case, was willing to place their trust in the assessee company's business model and its potential for future growth.

2.12 It is submitted that although the Id. CIT(A) has dismissed the appeal of the assessee company, the merits of the case have been duly considered. In this regard, reference has been drawn by the Id. CIT(A) from the order of the first appellate authority for the AY 2012-13.

2.13 It is further submitted that in the first appellate proceedings for AY 2012-13, the appeal of the assessee company before the first appellate authority was dismissed on the ground that the assessee company was unable to furnish the bank statement of the investor company at that stage. However, the assessee company has now obtained the bank statement of the investor company. In this regard, a separate prayer has been made for the admission of the said bank statement as additional evidence.

2.14 In the bank statement submitted for SDPL, it is clearly evident that SDPL made an investment in the assessee company during the year under consideration. The transfer of funds is duly reflected in the bank statement of SDPL, establishing the flow of funds. Furthermore, the source of such investment can be traced to transfers received from certain other entities.

2.15 In this regard, it is submitted that SDPL had duly provided confirmation during the course of the assessment proceedings. The source of the amount invested in the assessee company was explained as proceeds from the sale of shares in different other companies. This is clearly discernible from the bank statement of SDPL.

2.16 Reliance is placed on the following judicial pronouncements, the relevant extracts of which are set out below for the sake of convenience.

Supreme Court

CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)

"If share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO. Then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

CIT vs. Stellar Investment Ltd. [2001] 251 ITR 263 (SC)

"Even if it is assumed that the subscribers to the increased

share capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company."

Jurisdictional High Court

CIT v. Orchid Industries (P.) Ltd. [2017] 397 ITR 136 (Bombay)

"...Cash credit (Share application money) - Where assessee had produced on record documents to establish genuineness of party such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, only because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68..."

Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom)

"the court held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart, the creditor has explained as to how the credit was given to the assessee. Thus, assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur."

Other High Court

CIT vs. Vacmet Packaging (India) (P.) Ltd. [2014] 367 ITR 217 (Allahabad)

'...The Tribunal, while sustaining the view of the CIT(A), has observed that the assessee had filed documentary evidence in

order to prove the genuineness of the share application money consisting of; (i) share application forms; (ii) copies of bank accounts of the share applicants; (iii) copies of the income tax returns of the share allottees; (iv) balance sheets; and (v) copies of share allotment certificates and of the Board's resolution of the share applicants. The identity of the applicants was held to be established by the production of copies of the PAN cards and registration certificate with the Registrar of Companies. The financial capacity was held to be proved by the filing of copies of the bank accounts from where the share application money was transferred through banking channels to the assessee. Finally, it was held that the genuineness of the transaction had been established by filing of the documents and in view of the confirmation by both the companies of the respective transactions...."

"...In the present case the assessee had discharged the onus of establishing the identity, credit worthiness and genuineness of the transactions which had formed the basis of the addition that was made under Section 68...."

Peoples General Hospital Ltd. [2013] 356 ITR 65 (Madhya Pradesh)

"..Heads Notes Section 68 of the Income-tax Act, 1961 Cash credit [Share application money] - Whether, where assessee had established identity of person providing share application money, burden of proving creditworthiness of said person was not on assessee, and, therefore, addition could not be made as cash credit under section 68 - Held, yes..."

Arunananda Textiles P. Ltd. [2011] 333 ITR 116 (Karnataka)

"...It is not for the assessee to place material before the Assessing Officer in regard to the creditworthiness of the shareholders. If the assessee has given the addresses of the shareholders and their identity is not in dispute, whether they were capable of investing, the Assessing Officer shall investigate. It is not for the assessee to establish but it is for

the Department to enquire with the investors about their capacity to invest the amount in the shares...."

2.16.viii Som Tobacco India Ltd. [2014] 42 taxmann.com 310 (Allahabad)

"...7. In the present case also, we find that the names, addresses and PAN numbers of the deposits were provided to the AO, which were sufficient to disclose the identity of the persons. The AO did not question their identity and did not summon them.

8. The Supreme Court has Lovely Exports (P.) Ltd. (supra) clarified that in such a case the department is free to proceed to reopen the individual assessment of the depositors but it cannot be regarded as undisclosed income of assessee-company...."

CIT v. Divine Leasing & Finance Ltd. [2008] 299 ITR 268 (Delhi)

"...23. The ITAT has dismissed the revenue appeal and thus there are concurrent findings pertaining to the factual matrix. The following paragraph from the impugned decision adequately encapsulates the necessary details:

"Thus, the question is whether in the present case, the Assessing Officer had material to conclude that the share applicants in questions did not exist. It is seen that the assessee-company has furnished the necessary details such as PAN No./Income-tax Ward No./ration card of the share applicants and some of them are assessed to tax. The share application money has been received through banking channel. In some case, the confirmations/affidavits of share applicants containing the above detail were also filed. It is seen that the Assessing Officer did not carry out any inquiry into the income-tax record of the persons who have given the PAN No./Ward No. in order to ascertain the non-existence of the share applicants in question. The Assessing Officer has neither controverted nor disapproved the material filed by the assessee. In the case of CIT v. Makhani & Tyagi (P.) Ltd.

[2004] 267 ITR 433 1 (Delhi), the jurisdictional High Court has held that when the documentary evidence was placed on record to prove the identity of all the shareholders including their PAN/GIR numbers and filing of other documentary evidence in the form of ration card etc. which had neither been controverted nor disapproved by the Assessing Officer, no interference was called for. The Tribunal was justified in deleting the addition. The Assessing Officer proceeded to make the impugned addition on the ground that in some case some summons issued were returned unserved and in some case summons though served but there was no compliance. In this connection, it may be mentioned that in the case of CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78 2 (SC) the Hon'ble Court has held that when the assessee borrows the loan and if an assessee gives names and addresses of the creditors, who are assessed to tax and full particulars is furnished then the assessee has discharged the duty. If the revenue merely issues summons under section 131 and does not pursue the matter further, the assessee does not become responsible for the same even if the creditors do not appear. Addition cannot be made under section 68..."

8. On the contrary, Ld. DR relied upon the orders passed by the revenue authority.

9. We have heard the counsel for both the parties, perused the material placed on record, judgements cited before us and the orders passed by the revenue authority.

10. From the records, we notice that as per the facts of the present case, the assessee during the previous year 2011-12 issued 13666 shares to Siddhi Deal Makers Private Limited (hereinafter referred to as 'SDPL'). The

shares were agreed to be issued at a consideration of Rs.1500 per share comprising of face value of Rs.10 and premium of Rs.1,490/- per share.

11. Out of the total consideration, an amount of Rs. 40,99,800 was received by the assessee during the previous year 2011-12, and the balance consideration of Rs.1,63,99,200/- were received by the assessee during the year under consideration.

12. However, AO after considering the documents placed on record concluded that SDPL was a shell company and consequently additions were made u/s 68 of the Act for the amount received from SDPL

13. After evaluating the entire facts and circumstances of the present case, we found that the additions u/s 68 of the Act was made by the AO by doubting the genuineness of the investment made by SDPL into the assessee company, primarily on the ground that the assessee was not carrying out any business at the relevant point in time.

13. The AO and the Ld. CIT(A) had basically casted doubt upon the acumen of the investors in making a decision to invest in the assessee company, on the premise that the

assessee was not generating any profit. Therefore, according to AO no prudent investor would choose to invest in such a company. Thus genuineness of the transactions were in doubt and challenged by the AO .

14 In this regard, we are of the view that the decision to invest in a company, as well as the valuation at which such an investment is made is a matter of mutual understanding between the investor and the investee. Therefore, subjective consideration cannot be used as a basis to declare the investment as non-genuine.

15. As it has been pointed out that at the time the investment was made, the assessee company had significant future prospects in the field of electrification and related production activities. Considering these prospects, the investor deemed it fit to make the investment in the assessee company. Therefore, the doubts raised regarding the genuineness of the transaction are baseless and unwarranted.

16 We also noted that AO has also casted doubt by raising the contention that no prudent person would lend such a significant amount to assessee considering its financial position.

17. On this aspect, after considering the counter arguments, we found that the present case involves an investment in equity shares and not a loan. Therefore, when an investor decides to invest in a company, they were aware of the inherent risk associated with such an investment. Hence the decision to investment is made after careful consideration of the risk- return analysis, which obviously differs significantly from the principles governing the lending of money.

18. We are also of the view, that In the case of lending, the lender primarily assesses the financial position of the borrower to ensure repayment. In contrast, an investment decision is driven by the investor's confidence in the business strategy and future prospects of the company. As per the the investor, in this case, was willing to place their trust in the assessee company's business model and its potential for future growth.

19. We further noticed that the AO categorized the investor company SDPL as his shell company merely because the replies submitted by SDPL lacked a covering letter. Whereas it is important to mention here that SDPL itself, confirmed the source of investment stating that it was derived from the sale of shares of other entities.

Thus, in this way, the cash flow of the investor company was fully explained and made known to the AO

20. Therefore, in such a situation, if AO had any doubts about the credibility of investor company, then in that eventuality, the revenue could have proceeded against the investor company/shareholders, but assessee cannot be held liable as has been held by Hon'ble Punjab and Haryana High Court. In the case of **CIT Vs. K.C. Pipes (P) Ltd., [2017] 69 taxmann.com 373 (P&H)** wherein it was held as under:

“If the shareholders have acquired the money illegally, the respondent assessee cannot be held. There is nothing to show that the money belongs to the Company/assessee itself. The revenue must then proceed against the share holders.”

21. It is pertinent to mention here that During the course of assessment proceedings, assessee company submitted the following documents in relation to the amount received from SDPL:

2.1.1 Copy of the bank statement of the assessee company, reflecting the receipt of the entire amount of consideration through the banking channel.

2.1.ii Audited financial statements of SDPL for the periods ending 31.03.2014 and 31.03.2015, clearly evidencing the investments made by SDPL in the assessee company.

2.1.iii Confirmation letter from SDPL, dated 27.11.2017, confirming:

** The investment made in the assessee company.*

Date-wise particulars of the remittances made

** PAN details of SDPL..*

** Confirmation that the source of investment was the sale of shares of other entities.*

The aforementioned factual position is undisputed.

22 During the assessment proceedings, AO issued notice under Section 133(6) dated 16.11.2017 to SDPL, seeking specific details. The notice was duly served on SDPL, and a reply dated 14.12.2017 was submitted by SDPL, along with certain documents.

23 However, the AO noted that the letter received from SDPL did not mention the date of issuance and seal or logo of the SDPL. Based on these observations, AO concluded that SDPL was a shell company. Consequently, additions were made to the income of the assessee company u/s 68 for the amount received from SDPL.

24 It would not be out of place to mention here that the action of the AO in making the addition to the income of the assessee company is not pursuant to any search conducted on a third party. It is not the case of the lower

authorities that any search was conducted on a third party, which revealed that SDPL was engaged in providing bogus transactions or was a shell company.

25 Further, the documents submitted by the assessee company before the Id. AO did not reveal any discrepancies. In our view, once the assessee company submitted the required documents, the onus u/s 68 was fully discharged on its part. Thereafter, the burden shifted upon AO to rebut the claim of the assessee company.

26. After taking into consideration the factual and legal aspect of the present case, we were of the view that when once adequate evidences/materials are given which would prima-facie discharge burden of assessee in proving identity of shareholders, genuineness of transactions and creditworthiness of shareholders, therefore in case such an evidence is to be discharged or it is proved that it is 'created' evidence then in that eventuality, the revenue is supposed to made thorough investigation before it could nail assessee and fasten assessee with a liability u/s 68 or 69 of the Act, as held in the case of **CIT Vs. Gangeshwari Metal (P.) Ltd [2013] 30 taxmann.com 328 (Delhi)** is held as under:

"Head Notes..... Section 68 of the Income-tax Act, 1961- Cash credits Share application money - Assessment year 2004-05-

Whether where assessee in support of transaction of receipt of share application money brought on record various documents such as names and addresses of share applicants, their confirmatory letters, copies of bank statements etc., said transaction was to be regarded as genuine and, consequently, no addition could be made in respect of same under section 68 - Held, yes...."

27. Since during the course of assessment proceedings, the assessee had submitted all the required documents relating to amount received from SDPL and the bank statements submitted for SDPL, it is clearly evident that SDPL made an investment in the assessee company during the year under consideration. The transfer of funds is duly reflected in the bank statement of SDPL, establishing the flow of funds. Furthermore, the source of such investment can be traced to transfers received from certain other entities.

28. In this regard, we also noted and also admitted by Ld.AO that SDPL had duly provided confirmation during the course of the assessment proceedings. The source of the amount invested in the assessee company was explained as proceeds from the sale of shares in different other companies. This is clearly discernible from the bank statement of SDPL.

29. Reliance in this regard is placed on the following judicial pronouncements, the relevant extracts of which are set out below:

Supreme Court

CIT vs. Lovely Exports (P) Ltd. (2008) 216 CTR 195 (SC)

"If share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO. Then the department is free to proceed to reopen their individual assessments in accordance with law, but it cannot be regarded as undisclosed income of assessee company."

CIT vs. Stellar Investment Ltd. [2001] 251 ITR 263 (SC)

"Even if it is assumed that the subscribers to the increased share capital were not genuine, under no circumstances could the amount of share capital be regarded as undisclosed income of the company."

Jurisdictional High Court

CIT v. Orchid Industries (P.) Ltd. [2017] 397 ITR 136 (Bombay)

"....Cash credit (Share application money) - Where assessee had produced on record documents to establish genuineness of party such as PAN of all creditors along with confirmation, their bank statements showing payment of share application money, only because those persons had not appeared before Assessing Officer would not negate case of assessee so as to invoke section 68..."

Pr. CIT v. Veedhata Towers (P.) Ltd. [2018] 403 ITR 415 (Bom)

"the court held that assessee is only required to explain the source of the credit. There is no requirement under the law to explain the source of the source. In the instant case, there is no dispute as to the identity of the creditor. There is also no dispute about the genuineness of the transaction. That apart,

the creditor has explained as to how the credit was given to the assessee. Thus, assessee had discharged the onus which was on him as per the requirement of section 68 of the Act. What the Assessing Officer held was that sources of the source were suspect i.e., he suspected the two sources Shri Rajendra Bahadur Singh and Smt. Sarojini Thakur of the source Smt. Savitri Thakur."

Other High Court

CIT vs. Vacmet Packaging (India) (P.) Ltd. [2014] 367 ITR 217 (Allahabad)

'...The Tribunal, while sustaining the view of the CIT(A), has observed that the assessee had filed documentary evidence in order to prove the genuineness of the share application money consisting of; (i) share application forms; (ii) copies of bank accounts of the share applicants; (iii) copies of the income tax returns of the share allottees; (iv) balance sheets; and (v) copies of share allotment certificates and of the Board's resolution of the share applicants. The identity of the applicants was held to be established by the production of copies of the PAN cards and registration certificate with the Registrar of Companies. The financial capacity was held to be proved by the filing of copies of the bank accounts from where the share application money was transferred through banking channels to the assessee. Finally, it was held that the genuineness of the transaction had been established by filing of the documents and in view of the confirmation by both the companies of the respective transactions...."

"....In the present case the assessee had discharged the onus of establishing the identity, credit worthiness and genuineness of the transactions which had formed the basis of the addition that was made under Section 68...."

Peoples General Hospital Ltd. [2013] 356 ITR 65 (Madhya Pradesh)

"..Heads Notes Section 68 of the Income-tax Act, 1961 Cash credit [Share application money] - Whether, where assessee had established identity of person providing share application money, burden of proving creditworthiness of said person was not on assessee, and, therefore, addition could not be made as cash credit under section 68 - Held, yes..."

Arunananda Textiles P. Ltd. [2011] 333 ITR 116 (Karnataka)

"...It is not for the assessee to place material before the Assessing Officer in regard to the creditworthiness of the shareholders. If the assessee has given the addresses of the shareholders and their identity is not in dispute, whether they were capable of investing, the Assessing Officer shall investigate. It is not for the assessee to establish but it is for the Department to enquire with the investors about their capacity to invest the amount in the shares..."

2.16.viii Som Tobacco India Ltd. [2014] 42 taxmann.com 310 (Allahabad)

"...7. In the present case also, we find that the names, addresses and PAN numbers of the deposits were provided to the AO, which were sufficient to disclose the identity of the persons. The AO did not question their identity and did not summon them.

8. The Supreme Court has Lovely Exports (P.) Ltd. (supra) clarified that in such a case the department is free to proceed to reopen the individual assessment of the depositors but it cannot be regarded as undisclosed income of assessee-company..."

CIT v. Divine Leasing & Finance Ltd. [2008] 299 ITR 268 (Delhi)

"...23. The ITAT has dismissed the revenue appeal and thus there are concurrent findings pertaining to the factual matrix. The following paragraph from the impugned decision adequately encapsulates the necessary details:

"Thus, the question is whether in the present case, the Assessing Officer had material to conclude that the share applicants in questions did not exist. It is seen that the assessee-company has furnished the necessary details such as PAN No./Income-tax Ward No./ration card of the share applicants and some of them are assessed to tax. The share application money has been received through banking channel. In some case, the confirmations/affidavits of share applicants containing the above detail were also filed. It is seen that the Assessing Officer did not carry out any inquiry into the income-tax record of the persons who have given the PAN No./Ward No. in order to ascertain the non-existence of the share applicants in question. The Assessing Officer has neither controverted nor disapproved the material filed by the assessee. In the case of CIT v. Makhani & Tyagi (P.) Ltd.

[2004] 267 ITR 433 1 (Delhi), the jurisdictional High Court has held that when the documentary evidence was placed on record to prove the identity of all the shareholders including their PAN/GIR numbers and filing of other documentary evidence in the form of ration card etc. which had neither been controverted nor disapproved by the Assessing Officer, no interference was called for. The Tribunal was justified in deleting the addition. The Assessing Officer proceeded to make the impugned addition on the ground that in some case some summons issued were returned unserved and in some case summons though served but there was no compliance. In this connection, it may be mentioned that in the case of CIT v. Orissa Corpn. (P.) Ltd. [1986] 159 ITR 78 2 (SC) the Hon'ble Court has held that when the assessee borrows the loan and if an assessee gives names and addresses of the creditors, who are assessed to tax and full particulars is furnished then the assessee has discharged the duty. If the revenue merely issues summons under section 131 and does not pursue the matter further, the assessee does not become responsible for the same even if the creditors do not appear. Addition cannot be made under section 68..."

30. Considering the entire facts and circumstances of the present case, we are of the view that assessee has duly discharged the onus cast upon him by proving the identity, creditworthiness and genuineness of the transactions, therefore we directed the AO to delete the addition.

31. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.02.2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 25/02/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai